



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

GHAN

January 7, 2013

Memorandum for: Deputy Commissioner, Trials

Re: **Detective Andy Lewis**
Tax Registry No. 916060
Narcotics Borough Manhattan North
Disciplinary Case No. 2010-1861

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on June 7, 2012 and was charged with the following:

DISCIPLINARY CASE NO. 2010-1861

1. Said Detective Andy Lewis, assigned to Narcotics Borough Manhattan North, on or about January 31, 2010, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Detective wrongfully possessed a Colt AR 15 rifle within the City of New York, and said rifle was not possessed during the performance of said Officer's duties as a police officer. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5

PROHIBITED CONTACT

**NYC Administrative Code,
Sections 10-303 (1)(a) and 10-305(c)**

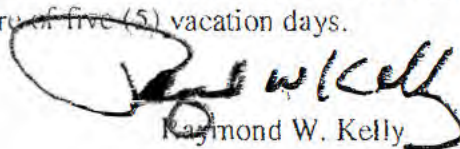
**PROHIBITION OF THE POSSESSION
OR DISPOSITION OF ASSAULT
WEAPONS AND EXEMPTIONS**

**NYC Rules & Regulations,
Section 17-01(a)(10)**

PROHIBITED ASSAULT WEAPONS

In a Memorandum dated September 12, 2012, Assistant Deputy Commissioner Robert W. Vinal found Respondent Guilty of Specification No. 1 in Disciplinary Case No. 2010 1861. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the misconduct for which Detective Lewis has been found Guilty and deem that a lesser penalty is warranted. Therefore, Detective Lewis's disciplinary penalty shall be the forfeiture of five (5) vacation days.


Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

September 12, 2012

MEMORANDUM FOR: Police Commissioner

Re: Detective Andy Lewis
Tax Registry No. 916060
Narcotics Borough Manhattan North
Disciplinary Case No. 2010-1861

The above-named member of the Department appeared before me on June 7, 2012, charged with the following:

1. Said Detective Andy Lewis, assigned to Narcotic Borough Manhattan North, on or about January 31, 2010, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Detective wrongfully possessed a Colt AR-15 rifle within the City of New York, and said rifle was not possessed during the performance of said Officer's duties as a police officer. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

NYC Administrative Code, Sections 10-303 (1)(a) and 10-305(c)
PROHIBITION OF THE POSSESSION OR
DISPOSITION OF ASSAULT WEAPONS AND
EXEMPTIONS

NYC Rules & Regulations, Section 17-01(a)(10) PROHIBITED ASSAULT
WEAPONS

The Department was represented by Vivian Joo, Esq., Department Advocate's Office, and Respondent was represented by James Moschella, Esq.

Respondent, through his counsel, entered a plea of Guilty to the subject charge and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, a 17-year member of the Department, has been assigned to Narcotics Borough Manhattan North (NBMN) since January, 2006. Prior to joining the Department, Respondent served on active duty in the United States Army. In 1991, he was assigned to Operation Desert Storm. He was Honorably Discharged. During his military service, he received safety training regarding the M-16 rifle which, according to Respondent, is similar to the Colt AR-15 rifle.

Respondent purchased a Colt AR-15 rifle from another member of the service, Sergeant Angel Collado, on August 29, 2004 for \$650.00. Respondent testified that he purchased the Colt AR-15 rifle, which can only fire one round at a time, for "memorabilia" purposes because it was a "classic Colt." The purchase was documented by a Notarized Letter [Respondent's Exhibit (RX) A]. Collado provided Respondent with a Bill of Sale (RX B) [which documents that Collado lawfully purchased the Colt AR-15 rifle in 2002 from a licensed gun dealer in Farmingdale, New York.] Collado, a close friend and a co-worker, told Respondent that it was legal for him to possess the Colt AR-15 rifle and on the date of the sale, Respondent and Collado both resided [REDACTED]

[REDACTED] From the day he purchased the Colt AR-15 rifle until January 31, 2010, the only other firearms that Respondent owned were his service revolver and an off duty revolver.

Respondent testified that he believed that as a New York City Police Officer he was exempt from New York City regulations banning possession of assault rifles. This belief was based on informal conversations Respondent had with other members of the Department.

On January 31, 2010, Respondent and his wife had a verbal disagreement that resulted in uniformed officers responding to their residence. Respondent was required to surrender all of his firearms including his Colt AR-15 rifle which he stored in his Department locker at NBMN. Respondent stated that he stored the rifle in his secure Department locker because he did not have a safe in his home which was large enough to store the rifle and because he was trained that Department lockers are a safe place to store firearms. Since he no longer possessed a service firearm, Respondent was assigned to perform restricted duties within his command.

On cross-examination, Respondent stated that he did not notify the Department of his purchase or add the Colt AR 15 rifle to the list of firearms on his "ten card" because he was told that he was not required to list any long rifles he owned on his "ten card." When he was asked whether he had made any inquiries as to whether possessing a Colt AR-15 rifle was legal, Respondent testified that he relied on what he was told by Collado, the sergeant who sold him the rifle. Collado, who was a close friend, informed Respondent that he could legally possess the rifle. Respondent asserted that he never attempted to conceal his Colt AR-15 rifle, or the fact that he owned a Colt AR-15 rifle, or the fact that it was stored in his Department locker.

The parties stipulated that after Respondent surrendered his Colt AR-15 rifle, Sergeant Mangome, assigned to the Organized Crime Control Bureau's Investigations

Unit, conducted an investigation into whether Respondent's possession of the Colt AR-15 rifle within the City of New York was lawful. When Sergeant Mangome asked members of the service assigned to the Department's Firearms and Tactics Section whether a Colt AR-15 rifle was classified as an assault weapon, he was told that they would get back to him. Mangome subsequently posed this question to an attorney assigned to the Legal Bureau and a sergeant assigned to the Licensing Division. They both told him that possession of a Colt AR-15 rifle was not lawful within New York City, but that a Colt AR-15 rifle can be lawfully possessed within the State of New York outside of New York City.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on June 30, 1995. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pleaded Guilty to having engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department by possessing a Colt AR-15 rifle within the City of New York.

In Disciplinary Case No. 81929/06, in a decision dated August 24, 2009, the Police Commissioner directed that the Respondent police officer forfeit 20 vacations days after he was found guilty at trial of engaging in conduct prejudicial to the good order, efficiency, or discipline of the Department by possessing an assault weapon (a DPMS

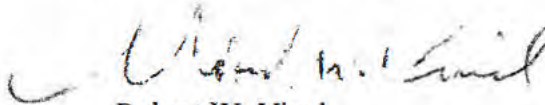
Inc. Model A 15 .223 caliber rifle) within New York City. In that decision, the Police Commissioner found that Respondent's assertion that he mistakenly believed that he could legally possess this assault weapon within New York City was not credible because Respondent offered no reason whatsoever for why he supposedly believed that such possession was lawful.

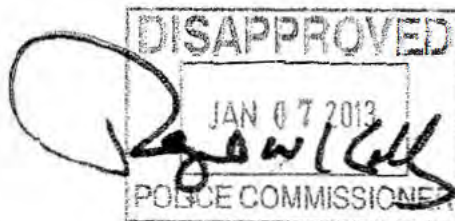
In formulating a penalty recommendation here, I have taken into consideration that Respondent purchased his Colt AR 15 rifle from an active, uniformed member of the Department who held the rank of sergeant and who resided [REDACTED] as did Respondent. I have also taken into consideration Respondent's lack of a prior disciplinary record during his 17 years of service.

The Assistant Department Advocate recommended that Respondent forfeit ten vacation days as a penalty.

I concur and recommend that Respondent forfeit ten vacation days.

Respectfully submitted,


Robert W. Vinal
Assistant Deputy Commissioner Trials

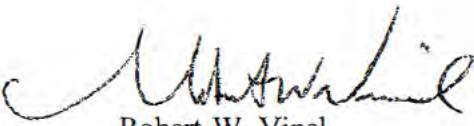


POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE ANDY LEWIS
TAX REGISTRY NO. 916060
DISCIPLINARY CASE NO. 2010-1861

The Respondent received an overall rating of 4.0 on his 2010-2011 performance evaluation, 3.5 on his 2009-2010 evaluation, and 4.0 on his 2008-2009 evaluation. He has been awarded five Excellent Police Duty medals. [REDACTED]
[REDACTED] He has no formal disciplinary record and no monitoring records.

For your consideration.


Robert W. Vinal
Assistant Deputy Commissioner Trials